

Robert Pauw, WSBA No. 13613
GIBBS HOUSTON PAUW
1000 Second Avenue, Suite 1600
Seattle, WA 98104-1003
Phone: (206)682-1080
Fax: (206)689-2270
Email: rpauw@ghp-law.net

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

Araceli Osorio,
Plaintiff,

v.

United States Citizenship and
Immigration Services; United States
Customs and Border Patrol; United States
Immigration and Customs; and United
States Department of Homeland Security,
Defendants

W.D. Wash. No. 2:18-cv-1834

COMPLAINT

INTRODUCTION

1. Plaintiff, Araceli Osorio, brings this action pursuant to the Freedom of Information Act (“FOIA”), the Administrative Procedure Act (“APA”), and the Due Process Clause of the Constitution.

2. Immigration and Customs Enforcement (ICE) alleges that Ms. Osorio is under a final order of removal dated June 5, 2005. Ms. Osorio never received notice of the hearing and was not aware that an order of removal was issued against her until she was ordered to report to ICE on May 30, 2018.

1 removal was issued against her until she appeared at the ICE office on May 30,
2 2018.

3 14. In order to respond to adequately respond to the allegation that an order
4 of removal has been issued against her and effectively prepare a motion to reopen,
5 Ms. Osorio needs a copy of any and all information maintained by the Defendants
6 regarding her immigration status.

7 15. On July 3, 2018, Ms. Osorio filed a request under the Freedom of
8 Information Act requesting a copy of any and all information relating to her. U.S.
9 Citizenship and Immigration Services acknowledged receiving the FOIA request on
10 July 5, 2018.

11 16. U.S. Citizenship and Immigration Services has stated that another office
12 has control of Ms. Osorio's file and that the FOIA response is delayed pending a
13 response from that agency.

14 17. On information and belief, ICE, CBP and DHS are other agencies that
15 have records relating to Ms. Osorio that are subject to Ms. Osorio's FOIA request.

16 18. On September 18, 2018, Ms. Osorio reported to ICE under her order of
17 supervision. Ms. Osorio informed ICE that she has filed a FOIA request and is
18 waiting for a copy of her deportation file, and that she intends to file a motion to
19 reopen once she has an opportunity to review her file. ICE ordered Ms. Osorio to
20 report again on January 10, 2019, and has stated that if she has not filed a motion
21 to reopen by that date then she may be taken into custody and deported.

1 19. To date, the Defendants have not produced any of the documents
2 requested by Ms. Osorio, and have withheld documents that are not subject to any
3 exemption under the FOIA.

4 20. To date, Ms. Osorio has not seen a copy of the alleged order of removal or
5 any documents that would support the issuance of an order of removal.

6 21. Because of the failure of the Defendants to timely produce copies of the
7 documents that have been requested, Ms. Osorio is unable to adequately respond to
8 the adverse evidence that ICE is relying on and is unable to effectively prepare a
9 motion to reopen.

10 JURISDICTION

11 22. This Court has jurisdiction over this action pursuant to 5 U.S.C.
12 §552(a)(4)(B) (Freedom Of Information Act) and 28 U.S.C. §1331 (federal question).
13 The Administrative Procedure Act, 5 U.S.C. 551, et seq., applies to this action.

14 VENUE

15 23. Venue is proper in the Western District of Washington under 5 U.S.C.
16 552(a)(4)(B) and 28 U.S.C. § 1391(e). This case is a civil action in which the
17 Defendants are officers or employees of the United States or an agency thereof. A
18 substantial part of the events or omissions giving rise to the claim occurred within
19 this judicial district. Plaintiff Araceli Osorio resides in Washington State, and this
20 action does not involve real property.

CLAIMS FOR RELIEF

COUNT 1 - VIOLATION OF THE FOIA: FAILURE TO PRODUCE
RECORDS

24. Plaintiff realleges, as if fully set forth herein, paragraphs 1-23 above.

25. The failure of the Defendants to respond in a timely manner to the FOIA requests submitted by Plaintiff Araceli Osorio, and the withholding of the documents requested by Ms. Osorio under the FOIA, constitutes a violation of 5 U.S.C. §552(a).

COUNT 2 - VIOLATION OF THE APA: UNLAWFUL DELAY

26. Plaintiff realleges, as if fully set forth herein, paragraphs 1-23 above.

27. By failing to respond to the FOIA requests submitted by Plaintiff Araceli Osorio, and by withholding the documents requested, the Defendants have unlawfully withheld and unreasonably delayed agency action, in violation of Administrative Procedure Act, 5 U.S.C. §§702, 704 and 706.

COUNT 3 - VIOLATION OF DUE PROCESS

28. Plaintiffs reallege, as if fully set forth herein, paragraphs 1-41 above.

29. The failure of the Defendants to provide copies of the documents requested by Plaintiff Araceli Osorio before executing an alleged order of removal constitutes a violation of the Due Process clause of the Constitution.

REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court grant the following relief:

1 A. Find that Defendants have violated 5 U.S.C. §552(a)(6)(A) by failing to
2 provide a timely response to the Plaintiff's FOIA request;

3 B. Find that Defendants have violated 5 U.S.C. §552(a) by improperly
4 withholding documents requested by Plaintiff Araceli Osorio;

5 C. Order Defendants to conduct an adequate search for all agency records
6 responsive to Plaintiff's FOIA Request within ten working days of the date of the
7 Court's Order;

8 D. Enjoin Defendants from withholding any and all nonexempt records
9 responsive to Plaintiffs' FOIA requests;

10 E. Enjoin Defendants from taking Plaintiff into custody and removing
11 Plaintiff from the United States until Plaintiff has had a reasonable opportunity to
12 obtain a copy of her immigration file, review such documents, and file a motion to
13 reopen if that is necessary;

14 F. Award Ms. Osorio the costs and reasonable attorney's fees incurred in
15 this action pursuant to 5 U.S.C. §552(a)(4)(E) and/or pursuant to the Equal Access
16 to Justice Act;

17 G. Grant such other relief at law and in equity as the Court may deem
18 just and proper.

1
2
3 Respectfully submitted,
4 By: /s/ Robert Pauw
5 Robert Pauw
6 Attorney for Plaintiff
7 Gibbs Houston Pauw
8 1000 2nd Ave, Suite 1600
9 Seattle, WA 98104
10 (206) 682-1080
11
12
13
14
15
16
17
18
19
20
21
22

Dated: December 19, 2018